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CASE NUMBER: _____

SUPREME COURT OF
THE UNITED STATES OF AMERICA

1984

FRED V. SASSO,

PETITIONER,

VS.

RAM PROPERTY MANAGE-
MENT AND FIREMAN'S
FUND INSURANCE CO.,

RESPONDENTS.

APPEAL FROM THE DECISION
OF THE SUPREME COURT OF
THE STATE OF FLORIDA

JURISDICTIONAL STATEMENT

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15 pp

QUESTION ON APPEAL

WHETHER THE BARRING OF WORKERS' COMPENSATION WAGE LOSS BENEFITS TO THE CLAIMANT BY FLORIDA STATUTES §440.15(3)(b)3.d. (1979) VIOLATES THE EQUAL PROTECTION PROVISIONS OF AMENDMENT 16 OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA.

LISTING OF THE PARTIES

EMPLOYEE	FRED V. SASSO 500 Evergreen Avenue Winter Springs, FL 32708
ATTORNEY FOR EMPLOYEE	IRVIN MEYERS, ESQ. 17 South Lake Avenue Orlando, FL 32801
EMPLOYER	RAM PROPERTY MANAGE- MENT 2511 N. Grady Ave., Suite 416 Tampa, FL 33607
CARRIER	FIREMAN'S FUND IN- SURANCE COMPANY Post Office Box 18025 Tampa, FL 33679
ATTORNEYS FOR EMPLOYER/CARRIER	HAAS, BOEHM, BROWN & RIGDON, P.A. Post Office Box 19005 Orlando, FL 32814

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REFERENCE TO THE OFFICIAL REPORTS OF OPINIONS

Sasso v. Ram Property Management,
431 So.2d 204 (Fla. 1st DCA 1983),
affirmed, 452 So.2d 932 (Fla. Case No.
63,708, opinion filed June 28, 1984)
[9 FLW 266].

Sasso v. Ram Property Management
Order of Deputy Commissioner Stephen J.
Johnson, Jr.
Dated August 6, 1981
Case No. AG-112
District H

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

This is a Florida workers' compensation proceeding involving an elderly claimant (age 78 at the date of injury) who is barred from certain workers' compensation benefits because of the aged-based classification in Florida Statutes §440(3)(b) 3.d. (1979).

The Florida Supreme Court upheld the constitutionality of this Statute on June 28, 1984. The claimant filed a Notice of Appeal on September 4, 1984, with the Florida Supreme Court.

United States code §1257(2) provides for appeal to the United States Supreme Court where the highest court in the state decides in favor of the constitionality of a state statute which is challenged as being repugnant to the Constitution of the United States of America.

THE CONSTITUTIONAL PROVISIONS INVOLVED

AMENDMENT XVI TO THE UNITED STATES CONSTITUTION

No State shall make or enforce any law which shall abridge the priviledges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE AND FACTS

[The parties herein shall be referred to as they were before the Deputy Commissioner and the references to the appendix shall be made by the notation (A-)]

In Florida, workers injured on the job have recourse only under the Florida workers' compensation system. Grice v. Suwannee Lumber Mfg. Co., 13 So.2d 742, (Fla. 1st DCA 1959). This is a quasi-judicial or administrative process similar to social security disability proceedings.

The claimant in the instant case was injured on the job and sustained a permanent impairment to his right arm. (A-99). Medical treatment and various benefits were provided to him. He reached maximum medical impvorement and filed a claim for wage loss benefits. (A-99)

Under Florida Law, after a worker has reached maximum medical improvement, sustained a permanent physical impairment, and performs an adequate and good faith job

search and is still unsuccessful in finding employment because of his injury, he is, in theory, entitled to "wage loss benefits". Wage loss benefits compensate an injured worker for his loss of wages as a result of his industrial injury.

In the instant case, the 78 year old claimant filed a claim for wage loss benefits. The Deputy Commissioner found that the claimant should be able to receive wage loss benefits, but that, because of Florida Statute §440.15(3)(b)3.d., he was barred from receiving them. (A-99)

Florida Statutes §440.15(3)(b)3.d. provides:

> The right to wage loss benefits shall terminate:
> . . .
> D. When the injured employee reaches age 65 . . .

§440.15(3)(b)3.d. Fla. Stat. (1979).

The claimant appealed to the Florida First District Court of Appeal challenging, inter alia, the constitutionality of the statute under the due process and equal protection clauses of the Florida and United States Constitutions. The Florida First District Court of Appeal upheld the statute saying that it was rationally related to legislative objectives.

The claimant appealed, on the same grounds as before, the District Court decision to the Florida Supreme Court which had discretionary jurisdiction under Florida Constitution Article 5 §3(b)(3) to review decisions of District Courts of Appeal which expressly declare valid a State Statute. The Florida Supreme Court accepted jurisdiction and on June 28, 1984, entered its decision upholding the statutes' validity. This appeal followed.

STATEMENT OF WHY THE QUESTION PRESENTED IS SUBSTANTIAL AND REQUIRES PLENARY CONSIDERATION AND BRIEFS ON THE MERITS AND ORAL ARGUMENT FOR ITS RESOLUTION

The reason why the question presented here is so important is that there are thousands of other people in Florida who are also affected by this Statute and these decisions.

Under the Florida Workers' Compensation Law, the date of the workers' injury is dispositive of what law controls. In other words, even though the Wage Loss Law in Florida has been changed at least two times since 1979 (a sign something might be wrong with the statute?), it is a substantive provision and all persons injured while the law was in effect are still governed by it.

The claimant, Fred Sasso, is deprived of something to which all similarly situated workers are entitled, solely because of his age. He is deprived of the equal protection

promised to us under the United States Constitution. He has no recourse in Florida except under the Workers' Compensation Law and the Workers' Compensation Law denies him protection against a loss of wages to which persons under age 65 are not deprived. He is denied a benefit of employment that is available to other (younger) workers. Wengler v. Druggists Mutual Ins. Co., 446 U.S. 142, 100 S.CT1540, 64 L. ED. 2D 107 (1980) Others in Florida also recognise the cruelty of this Statute. Consider the remarks made by Chief Judge Anstead of the Florida Fourth District Court of Appeal in a special concurrence in a similar case:

> I think this scheme constitutes a blatant example of age discrimination and is patently unconstitutional.
>
> The legislature, fortunately has recognized this problem and eliminated this discriminatory provision from the current statutory scheme.

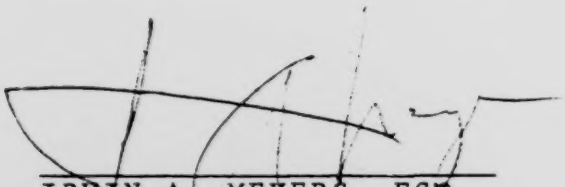
Whilden v. H.B.A. Corporation d/b/a Broward

Convalescent Home, _____ So.2d _____, 9 FLW 1724, (Fla. 4th DCA Case No. 83-2436, August 8, 1984).

Although the claimant is older than the age limits set out in the Statute, it may be helpful to examine the statement of policy in the Federal Age Discrimination in Employment Act of 1967 (as amended in 1978), 29 U.S.C. §2623 and 631. With this act and others like it, the legislatures of this country have recognized the myriad of discrimination problems that elderly Americans are experiencing. Claimant submits that this Florida Statute is an unconstitutional denial of equal protection and the claimant respectfully requests this Court to take this opportunity to examine this statute and hold it unconstitutional.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three true and correct copies of the foregoing have been sent by United States Mail to: RANDY FISCHER, ESQUIRE, Post Office Box 19005, Orlando, Florida, 32814; to HONORABLE JIM SMITH, Attorney General of the State of Florida, The Capitol, Tallahassee, Florida, 32301; and forty copies to the Clerk of the United States Supreme Court,



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